

Supreme Court, U. S.  
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IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1976

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**No. 76-1057**

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ESTATE OF SALLYE LIPSCOMB FRENCH  
JOHN W. KEY, et al.,

*Appellants,*

v.

MICHAEL M. DOYLE, et al.,

*Appellees.*

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ON APPEAL FROM THE DISTRICT OF COLUMBIA  
COURT OF APPEALS

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**MOTION TO DISMISS OR AFFIRM**

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**MOTION TO DISMISS OR AFFIRM**

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The Appellee, Calvary Baptist Church, moves the Court to dismiss the appeal herein or, in the alternative, to affirm the judgment of the District of Columbia Court of Appeals on the grounds (1) that this Court has no jurisdiction over this appeal under 28 U.S.C. § 1257(1); or (2) in the alterna-

tive, to affirm on grounds that it is manifest that the questions on which the decision of the cause depend are so unsubstantial as not to need further argument.

## I

THE DISTRICT OF COLUMBIA STATUTE  
INVOLVED AND NATURE OF THE CASE

## A. Statute

This appeal involves the constitutionality of the District of Columbia statute, D. C. Code 1973 § 18-302, which provides that any devise or bequest to a clergyman or religious organization is invalid if made within 30 days of the testator's death.

## B. The Proceedings Below

Sallye Lipscomb French executed a Will on October 13, 1972, in which she left one-third of her residuary estate to each Appellee, Calvary Baptist Church and St. Matthew's Cathedral. She died November 2, 1972, less than 30 days after execution of the Will. There is no evidence that Appellees had made any attempts to influence her choice of legatees. The Executor of the Estate instituted an action in the Superior Court of the District of Columbia seeking instructions on proper distribution of the Estate in light of D. C. Code 1973 § 18-302. Appellants, the decedent's heirs-at-law and next of kin, and the Appellee-Churches filed cross motions for summary judgment, raising the question of the constitutionality of District of Columbia statute, D. C. Code 1973 § 18-302. The trial court granted summary judgment in favor of Appellees, holding the statute violated both the due process clause of the Fifth Amendment and the free exercise clause of the First

Amendment (Juris. State. Append. B., pp. 1b-9b). Upon appeal, on November 1, 1976, the District of Columbia Court of Appeals affirmed the decision of the lower Court, 365 A.2d 621 (Juris. State. Append. A., pp. 1a-11a).

## II

## ARGUMENT

A. This Court Has No Jurisdiction To Review on  
Direct Appeal the Decision of the District of  
Columbia Court of Appeals in This Case Under  
28 U.S.C. § 1257(1).

Title 28 U.S.C. § 1257 provides:

§ 1257. *State courts; appeal; certiorari*

Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:

(1) By appeal, where is drawn in question the validity of a treaty or statute of the United States and the decision is against validity.

\* \* \*

This right of appeal is applicable only to "statute of the United States." Section 18-302 of the District of Columbia Code is a local District of Columbia statute enacted by Congress and applies only within the boundaries of the District of Columbia. It is not a statute of the United States enacted by Congress to be generally applicable throughout the United States. See: Preface to D. C. Code 1973 Edition which, in part, provides as follows:



"This is the sixth edition of the Code of Laws of the District of Columbia prepared and published pursuant to Title 1 U.S. Code, section 202. This edition contains all the general and permanent laws relating to or in force in the District of Columbia, on January 3, 1973, except such laws as are of application in the District of Columbia by reason of being laws of the United States, general and permanent in their nature."

See: *Griffin v. United States*, 336 U.S. 704, 713-715 (1949).

It has been rule of this Court not ordinarily to review decisions of Courts of the District of Columbia which are based on statutes that are limited or confined in operation to the District or which declare the common law of the District. *Del Vecchio v. Bowers*, 296 U.S. 280, 285 (1935).

In considering its jurisdiction, this Court has interpreted the words "any law of the United States" contained in § 250 of the Judicial Code (Act of March 3, 1911, C. 231; 36 Stat. 1087) as not applicable to review of cases from the Court of Appeals of the District of Columbia. The Judicial Code § 250 provided that any final judgment or decree of the Court of Appeals may be re-examined in cases in which the construction of "any law of the United States" is drawn in question by the defendant. In the case of *American Security and Trust Co. v. Commissioners*, 224 U.S. 491 (1912), the Court held that § 250 of the Judicial Code should not be construed to apply to purely local laws of the District of Columbia. To the same effect, see *Washington, Alexandria, Mt. Vernon Railway Co. v. Downey*, 236 U.S. 190 (1915); *McGowan v. Parish*, 228 U.S. 312 (1913); *United Surety Co. v. American Fruit Products Co.*, 238 U.S. 140 (1915).

Had Congress wanted to allow direct appeals to the Supreme Court from the District of Columbia Court of Appeals, it would have been easy for it to have done so at the time of the passage of the District of Columbia Court Reform and Criminal Procedure Act of 1970, 84 Stat. 473. In fact, for jurisdictional purposes Title 28 U.S.C. § 1257 was amended to provide that for purposes of that section, the term "highest court of a State" included the District of Columbia Court of Appeals. Yet, nowhere in the Act did Congress provide that the words "statute of the United States" included acts passed by Congress which apply only within the boundaries of the District of Columbia. Compare: *Palmore v. United States*, 411 U.S. 389 (1973). Following this Court's practice of strict construction of statutes which authorize appeals, it is submitted that the Court has no direct jurisdiction over this appeal.

#### **B. In the Alternative This Court Should Affirm the Judgment of the Court Below.**

In the alternative, if the Court determines that it has jurisdiction of this cause by a direct appeal under § 1257(1) of the Judicial Code, or if the Court wishes to treat the Jurisdictional Statement as a petition for certiorari, Cf. 28 U.S.C. § 2103, the Court should affirm the judgment of the Courts below that the D.C. statute violated the First and Fifth Amendments of the United States Constitution. The decision of the Court below is clearly correct. The reasons set forth in the opinions of the Courts below fully support the decision of those Courts. Nothing further can be added at this point.

## III

## CONCLUSION

Wherefore, Appellee respectfully submits that the Motion to Dismiss should be granted because (1) the Court has no jurisdiction to entertain this direct appeal under Title 28 U.S.C. § 1257(1); or, in the alternative (2) that for the reasons stated in the opinions of the Courts below, the decision should be affirmed.

Resepctfully submitted,

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## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of this Motion to Dismiss or Affirm was served by first-class mail, postage prepaid, this 18th day of February, 1977, on the following persons:

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